

Assembly Bill No. 1426

CHAPTER 559

An act to amend Sections 110, 123.5, 123.6, 127, 133, 138, 138.1, 138.2, 5307, 5307.3, 5310, 5311.5, 5500.3, and 5502 of, and to repeal Section 127.5 of, the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2011. Filed with
Secretary of State October 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1426, Solorio. Workers' compensation: court administrator.

Existing law creates the position of court administrator with respect to the workers' compensation adjudicatory process at the trial level. The court administrator is appointed by the Governor with the advice and consent of the Senate and has specified powers and duties relating to the workers' compensation trial process, including supervision of administrative law judges and prescribing certain forms and calendars.

This bill would remove the position of court administrator and distribute the duties to the Workers' Compensation Appeals Board and the Administrative Director of the Division of Workers' Compensation, as specified. The bill would make other technical and conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that the court administrator in the Division of Workers' Compensation, created pursuant to Chapter 6 of the Statutes of 2002, fails to achieve the intended uniformity and expedition of proceedings in the district offices of the workers' compensation appeals board. The court administrator creates divided lines of authority and accountability, and it does not promote coordination of the functions of the Division of Workers' Compensation. The Legislature therefore intends to eliminate the position of the court administrator and to reassign the powers and duties of the court administrator to the Workers' Compensation Appeals Board or to the Administrative Director of the Division of Workers' Compensation, as appropriate.

SEC. 2. Section 110 of the Labor Code is amended to read:

110. As used in this chapter:

(a) "Appeals board" means the Workers' Compensation Appeals Board. The title of a member of the board is "commissioner."

(b) “Administrative director” means the Administrative Director of the Division of Workers’ Compensation.

(c) “Division” means the Division of Workers’ Compensation.

(d) “Medical director” means the physician appointed by the administrative director pursuant to Section 122.

(e) “Qualified medical evaluator” means physicians appointed by the administrative director pursuant to Section 139.2.

SEC. 3. Section 123.5 of the Labor Code is amended to read:

123.5. (a) Workers’ compensation administrative law judges employed by the administrative director shall be taken from an eligible list of attorneys licensed to practice law in this state, who have the qualifications prescribed by the State Personnel Board. In establishing eligible lists for this purpose, state civil service examinations shall be conducted in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). Every workers’ compensation judge shall maintain membership in the State Bar of California during his or her tenure.

A workers’ compensation administrative law judge may not receive his or her salary as a workers’ compensation administrative law judge while any cause before the workers’ compensation administrative law judge remains pending and undetermined for 90 days after it has been submitted for decision.

(b) All workers’ compensation administrative law judges appointed on or after January 1, 2003, shall be attorneys licensed to practice law in California for five or more years prior to their appointment and shall have experience in workers’ compensation law.

SEC. 4. Section 123.6 of the Labor Code is amended to read:

123.6. (a) All workers’ compensation administrative law judges employed by the administrative director shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code or to the commentary to the Code of Judicial Ethics.

In consultation with the Commission on Judicial Performance, the administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(b) Honoraria or travel allowed by the administrative director, and not otherwise prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless the administrative director has provided prior

approval in writing to the workers' compensation administrative law judge allowing him or her to accept those payments.

SEC. 5. Section 127 of the Labor Code is amended to read:

127. The administrative director may do all of the following:

(a) Charge and collect fees for copies of papers and records, for certified copies of official documents and orders or of the evidence taken or proceedings had, for transcripts of testimony, and for inspection of case files not stored in the place where the inspection is requested. The administrative director shall fix those fees in an amount sufficient to recover the actual costs of furnishing the services. No fees for inspection of case files shall be charged to an injured employee or his or her representative.

(b) Publish and distribute from time to time, in addition to the reports to the Governor, further reports and pamphlets covering the operations, proceedings, and matters relative to the work of the division.

(c) Prepare, publish, and distribute an office manual, for which a reasonable fee may be charged, and to which additions, deletions, amendments, and other changes from time to time may be adopted, published, and distributed, for which a reasonable fee may be charged for the revision, or for which a reasonable fee may be fixed on an annual subscription basis.

(d) Fix and collect reasonable charges for publications issued.

SEC. 6. Section 127.5 of the Labor Code is repealed.

SEC. 7. Section 133 of the Labor Code is amended to read:

133. The Division of Workers' Compensation, including the administrative director and the appeals board, shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code.

SEC. 8. Section 138 of the Labor Code is amended to read:

138. The administrative director may appoint a deputy to act when he or she is absent from the state due to official business, vacation, or illness.

SEC. 9. Section 138.1 of the Labor Code is amended to read:

138.1. The administrative director shall be appointed by the Governor with the advice and consent of the Senate and shall hold office at the pleasure of the Governor. He or she shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 10. Section 138.2 of the Labor Code is amended to read:

138.2. (a) The headquarters of the Division of Workers' Compensation shall be based at and operated from a centrally located city.

The administrative director shall have an office in that city with suitable rooms, necessary office furniture, stationery, and supplies, and may rent quarters in other places for the purpose of establishing branch or service offices, and for that purpose may provide those offices with necessary furniture, stationery, and supplies.

(b) The administrative director shall provide suitable rooms, with necessary office furniture, stationery, and supplies, for the appeals board at the centrally located city in which the board shall be based and from which

it shall operate, and may rent quarters in other places for the purpose of establishing branch or service offices for the appeals board, and for that purpose may provide those offices with necessary furniture, stationery, and supplies.

(c) All meetings held by the administrative director shall be open and public. Notice thereof shall be published in papers of general circulation not more than 30 days and not less than 10 days prior to each meeting in Sacramento, San Francisco, Fresno, Los Angeles, and San Diego. Written notice of all meetings shall be given to all persons who request, in writing directed to the administrative director, that they be given notice.

SEC. 11. Section 5307 of the Labor Code is amended to read:

5307. (a) The appeals board may, by an order signed by four members, do all of the following:

- (1) Adopt reasonable and proper rules of practice and procedure.
- (2) Regulate and provide the manner in which, and by whom, minors and incompetent persons are to appear and be represented before it.
- (3) Regulate and prescribe the kind and character of notices, where not specifically prescribed by this division, and the service thereof.
- (4) Regulate and prescribe the nature and extent of the proofs and evidence.

(b) No rule or regulation of the appeals board pursuant to this section shall be adopted, amended, or rescinded without public hearings. Any written request filed with the appeals board seeking a change in its rules or regulations shall be deemed to be denied if not set by the appeals board for public hearing to be held within six months of the date on which the request is received by the appeals board.

SEC. 12. Section 5307.3 of the Labor Code is amended to read:

5307.3. The administrative director may adopt, amend, or repeal any rules and regulations that are reasonably necessary to enforce this division, except where this power is specifically reserved to the appeals board.

No rule or regulation of the administrative director pursuant to this section shall be adopted, amended, or rescinded without public hearings. Any written request filed with the administrative director seeking a change in its rules or regulations shall be deemed to be denied if not set by the administrative director for public hearing to be held within six months of the date on which the request is received by the administrative director.

SEC. 13. Section 5310 of the Labor Code is amended to read:

5310. The appeals board may appoint one or more workers' compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim. The administrative director may appoint workers' compensation administrative law judges. Any workers' compensation administrative law judge appointed by the administrative director has the powers, jurisdiction, and authority granted by law, by the order of appointment, and by the rules of the appeals board.

SEC. 14. Section 5311.5 of the Labor Code is amended to read:

5311.5. The administrative director shall require all workers' compensation administrative law judges to participate in continuing education to further their abilities as workers' compensation administrative law judges, including courses in ethics and conflict of interest. The director may coordinate the requirements with those imposed upon attorneys by the State Bar in order that the requirements may be consistent.

SEC. 15. Section 5500.3 of the Labor Code is amended to read:

5500.3. (a) The appeals board shall establish uniform district office procedures, uniform forms, and uniform time of court settings for all district offices of the appeals board. No district office of the appeals board or workers' compensation administrative law judge shall require forms or procedures other than as established by the appeals board. A workers' compensation administrative law judge who violates this section may be subject to disciplinary proceedings.

(b) The appeals board shall establish uniform court procedures and uniform forms for all other proceedings of the appeals board.

SEC. 16. Section 5502 of the Labor Code is amended to read:

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed, on a form prescribed by the appeals board, is filed. If a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, an application for adjudication shall accompany the declaration of readiness to proceed.

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following:

(1) The employee's entitlement to medical treatment pursuant to Section 4600.

(2) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(3) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(4) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.

(c) The administrative director shall establish a priority conference calendar for cases in which the employee is represented by an attorney and the issues in dispute are employment or injury arising out of employment or in the course of employment. The conference shall be conducted by a workers' compensation administrative law judge within 30 days after the declaration of readiness to proceed. If the dispute cannot be resolved at the conference, a trial shall be set as expeditiously as possible, unless good cause is shown why discovery is not complete, in which case status conferences shall be held at regular intervals. The case shall be set for trial when discovery is complete, or when the workers' compensation

administrative law judge determines that the parties have had sufficient time in which to complete reasonable discovery. A determination as to the rights of the parties shall be made and filed within 30 days after the trial.

(d) The administrative director shall report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor.

(e) (1) In all cases, a mandatory settlement conference shall be conducted not less than 10 days, and not more than 30 days, after the filing of a declaration of readiness to proceed. If the dispute is not resolved, the regular hearing shall be held within 75 days after the declaration of readiness to proceed is filed.

(2) The settlement conference shall be conducted by a workers' compensation administrative law judge or by a referee who is eligible to be a workers' compensation administrative law judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee or workers' compensation administrative law judge shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial. The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation administrative law judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(f) In cases involving the Director of the Department of Industrial Relations in his or her capacity as administrator of the Uninsured Employers Fund, this section shall not apply unless proof of service, as specified in paragraph (1) of subdivision (d) of Section 3716, has been filed with the appeals board and provided to the Director of Industrial Relations, valid jurisdiction has been established over the employer, and the fund has been joined.

(g) Except as provided in subdivision (a) and in Section 4065, the provisions of this section shall apply irrespective of the date of injury.

SEC. 17. All regulations adopted by the court administrator shall remain in effect unless amended or repealed by either the Workers' Compensation Appeals Board or the Administrative Director of the Division of Workers' Compensation. Regulations of the court administrator that have been adopted pursuant to Sections 5307, 5500.3, or subdivision (a) of Section 5502 shall be deemed to be regulations of the Workers' Compensation Appeals Board.

All other regulations of the court administrator shall be deemed to be regulations of the Administrative Director of the Division of Workers' Compensation.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to streamline the procedures used in the workers' compensation adjudication system by giving the Administrative Director of the Division of Workers' Compensation and the Workers' Compensation Appeals Board the authority that statute presently gives to the court administrator as quickly as possible while there is currently no court administrator, it is necessary that this act take effect immediately.